

**BOARD OF ENVIRONMENTAL REVIEW  
AGENDA ITEM**

**EXECUTIVE SUMMARY FOR BER DISCUSSION AND ACTION ON  
WETA/AFL-CIO PROPOSAL TO CHANGE AIR QUALITY PERMIT APPEAL  
PROCESS**

**Agenda # III, F-2**

**Summary:** A letter dated November 7, 2001 was submitted to the Board by the Montana State AFL-CIO, expressing concerns about the length of the air quality permit appeal process; and a proposal to improve this process was presented to the Board at its November 16, 2001 meeting by the Western Environmental Trade Association (WETA). This proposal included specific steps that WETA recommended be adopted by the Board to make the appeal process more timely and fair to all parties. In December, 2001, the Department organized a work group of interested parties, which met on January 7, 2002 to review the proposal. A summary report of the work group's comments is attached.

**List of Affected Rules:** Not applicable.

**Affected Parties Summary:** The proposed action would affect any party wishing to appeal the Department's decision on a permit, including other state and federal agencies, permit applicants, environmental groups, and the public.

**Scope of Proposed Proceeding:** The Board has been asked by WETA and the Montana State AFL-CIO to consider changes to the air quality permit appeal process that would expedite the process while insuring that it remains equitable and preserves due process rights.

**Background:** Jerry Driscoll, Executive Secretary of the Montana State AFL-CIO, submitted a letter to the Board prior to its November 16, 2001 meeting, in which he expressed concerns about the length of the air quality permit appeal process. He stated that the existing process acts as a disincentive to potential project investors and prevents or delays employment opportunities. WETA also submitted a proposal to the Board at this meeting, which contained suggestions for improvements to the appeal process. They expressed concerns with uncertainty and delay in the appeal process and requested that the Board take action to clarify and improve this process. Their proposal included specific steps that they recommended the Board adopt to make the appeal process more timely and fair to all parties. WETA believes that their recommendations could be adopted by the Board without statutory changes.

On December 13, 2001, a preliminary meeting was held to discuss the proposal, attended by representatives of the Department, WETA and the Montana Environmental Information Center (MEIC). Discussion on specific points of the proposal was deferred to the next meeting, which was held on January 7, 2002 and attended by representatives of the Department, WETA, AFL-CIO, MEIC, Montanans Against Toxic Burning (MATB),

Holcim, Smurfit-Stone, Montana Refining, Montana Petroleum Association and Bison Engineering. A summary of this meeting is attached.

**Hearing Information:** Not applicable.

**Board Options:** The Board may:

1. Direct the Department to study the issue further;
2. Determine that changes are necessary and initiate rulemaking;
3. Propose administrative action to implement changes;
4. Suggest legislative action to implement changes; or
5. Determine that changes to the appeal process are unnecessary and decline to take further action.